

FILED
SECTION
11

BEFORE THE FEDERAL ELECTION COMMISSION. 2017 APR 20 PM 2:22

)
) MUR 7230
)

CELA

RESPONSE OF NATIONAL PUBLIC RADIO, INC. AND AUDIE CORNISH

National Public Radio, Inc. ("NPR") and NPR host and journalist Audie Cornish (collectively, "Respondents"), by and through undersigned counsel, submit this response to the Complaint in the above-captioned Matter Under Review. The Complaint alleges that Respondents made an "impossible to quantify" contribution to Senator Ted Cruz's 2016 presidential campaign by reporting in a radio broadcast and on NPR's website that Senator Cruz was the first Republican officially to announce his 2016 presidential candidacy. The Complaint's allegations have no merit under the Federal Election Campaign Act (the "Act") or FEC regulations and are, in any case, inconsistent with the First Amendment. Accordingly, Respondents request that the Commission promptly dismiss this matter and close the file.

As a threshold matter, the Commission must dismiss because Respondents are *bona fide* members of the media whose radio and digital reports fall squarely within the Act's media exemption and thus outside FEC jurisdiction. *See Reader's Digest Ass'n, Inc. v. FEC*, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981) (requiring that the Commission restrict its initial inquiry to whether the media exemption applies, in part because "freedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation"); *FEC v. Phillips Publ'g, Inc.*, 517 F. Supp. 1308, 1312-13 (D.D.C. 1981) (same). The Commission has routinely recognized that Congress never intended for the Act "'to limit or burden in any way the first amendment freedom of the press.'" MUR 4863 (WABC AM 770), First General Counsel's Report at 2 (1999) (quoting H. R. Rep. No. 943, 93d Cong., 1st Sess., at 4 (1974)). Accordingly, the Act and FEC regulations exclude from the definitions of "expenditure" and "contribution" the value of "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 52 U.S.C. § 30101(9)(B)(i); *see also* 11 C.F.R. § 100.73 (the exclusion from the definition of "contribution" covers a "producer," a "Web site," and "any Internet or electronic publication"); *id.* § 100.132 (same as to "expenditure"). NPR is an independent media organization that is not owned or controlled by a political party, political committee, or federal candidate; the Complaint raises no allegation or suggestion to the contrary. In fact, the Complaint completely ignores the ownership or control element of 11 C.F.R. § 100.73, the regulation the Complaint relies upon.

Furthermore, even if Respondents did not have the benefit of the law's media exemption (which they do), the Commission would still have to dismiss this matter. Respondents' independent speech could not constitute an in-kind contribution to Senator Cruz's campaign in the form of a coordinated communication under 11 C.F.R. § 109.21. Nor could the mere reporting on Senator Cruz's announcement of his presidential candidacy, without express advocacy, qualify as an independent expenditure. *See* 11 C.F.R. § 100.16 ("The term

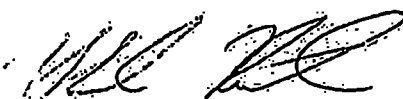
17044421915

independent expenditure means an expenditure for a communication expressly advocating the election or defeat of a clearly identified candidate"); *see also id.* § 100.22(a) (defining "expressly advocating").

For these reasons, Respondents respectfully request that the Commission promptly dismiss the Complaint in this matter and close the file.

Dated: April 20, 2017.

Respectfully submitted,



Micah J. Ratner
(D.C. Bar No. 996955)
1111 North Capitol Street, NE
Washington, DC 20002
(202) 513-2045
mratner@npr.org
*Counsel for National Public Radio, Inc. and
Audie Cornish*



FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

2017 APR 20 PM 2:22

STATEMENT OF DESIGNATION OF COUNSEL CELA
Please use one form for each Respondent/Entity/Treasurer.
FAX (202) 219-3923

MUR # 7230

NAME OF COUNSEL: Micah J. Ratner

FIRM: National Public Radio, Inc.

ADDRESS: 1111 North Capitol Street, NE

Washington, DC 20002

TELEPHONE- OFFICE (202) 513-2045

FAX (202) 513-3021

Web Address mratner@npr.org

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

4/20/2017

Date

[Signature]
Respondent/Agent Signature

Chief Legal Officer

Title (Treasurer/Candidate/Owner)

RESPONDENT: National Public Radio, Inc. / Audie Cornish

(Committee Name, Company Name, or Individual Named in Notification Letter)

MAILING ADDRESS: 1111 North Capitol Street, NE
(Please Print)

Washington, DC 20002

TELEPHONE- HOME ()

BUSINESS (202) 513-2045

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation